



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 11.11.2024

204 (11 cases)

(1) CRM-M-5087-2024

Bimal Kant

V/s

....Petitioner

State of Punjab and another

....Respondents

(2) CRM-M-22253-2024 (O&M)

Ranjit Singh @ Jita Mor

V/s

....Petitioner

State of Punjab and another

....Respondents

(3) CRM-M-17437-2024

Jagdish Singh

V/s

....Petitioner

State of Punjab and another

....Respondents

(4) CRM-M-17483-2024

Munish Kumar

V/s

....Petitioner

State of Punjab and another

....Respondents

(5) CRM-M-22875-2024

Ranjeet Singh @ Jeeta Morh

V/s

....Petitioner

State of Punjab and another

....Respondents



(6) CRM-M-48591-2024

Rajinder Kaur and another

....Petitioners

V/s

State of Punjab and another

....Respondents

(7) CRM-M-48598-2024

Rajinder Kaur and another

....Petitioners

V/s

State of Punjab and another

....Respondents

(8) CRM-M-35860-2024

Jagjit Singh Chahal

....Petitioner

V/s

Vasu Pathak

....Respondent

(9) CRM-M-34496-2024

Saurabh Gupta and another

....Petitioners

V/s

State of Punjab and another

....Respondents

(10) CRM-M-35659-2024

Inderjit Kaur Chahal and another

....Petitioners

V/s

Charan Singh

....Respondents

(11) CRM-M-42733-2024

Dinesh Sarna

....Petitioner

V/s

Charan Singh

....Respondent



CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr.Vivek K. Thakur, Advocate and
Mr.Angad Parmar, Advocate for the petitioner
in CRM-M-5087, 17437, 17483, 22253, 22875,
48591 and 48598 of 2024.

Mr.P.S.Ahluwalia, Advocate and
Mr.Lovejeet Poonia, Advocate for the petitioners
in CRM-M-34496 of 2024.

Mr.Ishan Gupta, Advocate and
Mr. Harita Panthey, Advocate for the petitioners
in CRM-M-35659, 35860 & 42733 of 2024.

Mr.A.D.S. Sukhija, Addl. A.G., Punjab.

Mr.Navkiran Singh, Advocate
for the complainant in all cases.

MANJARI NEHRU KAUL, J. (ORAL)

1. This order shall dispose of eleven criminal miscellaneous petitions bearing Nos. 5087, 17437, 17483, 22253, 22875, 48591, 48598, 34496, 35659, 35860 & 42733 of 2024 for setting aside Complaints No.COMA/1/2022 dated 29.03.2022 under Sections 420, 120-B, of the IPC, Sections 21, 21-B, 25, 27, 27-A, 29 of the NDPS Act, Sections 25, 27, 54, 59 of the Arms Act read with Sections 7, 8, 9, 13(2) of the Prevention of Corruption Act, 1988, COMA/2/2022 dated 04.04.2022 (Annexure P-2) under Sections 420, 465, 467, 468, 471, 120-B of the IPC, Sections 21, 21-B, 25, 27, 27-A, 29 of the NDPS Act, Sections 25, 27, 54, 59 of the Arms Act read with Sections 7, 8, 9, 13 of the Prevention of Corruption Act, 1988, COMA/806/2022 dated 29.03.2022 (Annexure P-2) under Sections

**CRM-M-5087-2024 with connected cases -4-**

420, 120-B, of the IPC, Sections 21, 21-B, 25, 27, 27-A, 29 of the NDPS Act, Sections 25, 27, 54, 59 of the Arms Act read with Sections 7, 8, 9, 13(2) of the Prevention of Corruption Act, 1988 pending in the Court of learned Judge, Special Court, Kapurthala as the allegations therein have arisen from one common FIR bearing FIR No.34 dated 09.02.2022 (Annexure P-1) under Sections 21, 25, 27, 27(a), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the NDPS Act), registered at Police Station Special Task Force, SAS Nagar along with all consequential proceedings arising therefrom. For the sake of brevity, the facts are being taken from CRM-M-5087-2024.

2. Learned counsel for the petitioners argued that the impugned summoning order dated 27.10.2023 (Annexure P-8) and order dated 14.11.2023 (Annexure P-9) in CRM-M-5087 of 2024 vide which the petitioners were summoned, are legally flawed and cannot be sustained. It has been contended that, while taking cognizance of the case based on a private complaint, the learned trial Court overlooked the following critical legal requirements :

- (i) that Section 19 of the PC Act explicitly bars a Court from taking cognizance of offences alleged against a public servant without prior sanction from the Competent Authority. In the present case, such requisite sanction was not obtained from the relevant Authority before proceeding;
- (ii) that Section 36-A (1)(d) of the NDPS Act empowers only special Courts to take cognizance of offences under the NDPS Act based on either (a) police report, or (b) a complaint filed by an officer duly authorized by



the Central or State Government. In the present case, the trial Court proceeded on the basis of a private complaint, which does not satisfy the statutory conditions laid out under Section 36-A (1)(d) of the NDPS Act.

(iii) that similarly for offences under the Arms Act, the trial Court was not authorized to take cognizance without prior sanction from the concerned District Magistrate. In the absence of the sanction, any cognizance taken by the trial Court stands procedurally and legally flawed.

3. Learned counsel for the respondents submits that FIR has already been registered in connection with the same allegations presented in the private complaint. It has been further submitted that as per the provisions of Section 210 of the Cr.P.C./210 of the BNSS, when a private complaint and an FIR are based on identical facts/allegations, the trial Court is required to call for a police report on the FIR and thereafter the proceedings are consolidated so as to ensure that both the trial on the basis of the private complaint and the trial based on the FIR are conducted as a single, unified proceeding. It has also been asserted by the learned counsel for the respondents that the trial Court, by not obtaining this report under Section 210 of the Cr.P.C./210 of the BNSS and not consolidating the cases, has failed to adhere to procedural requirements.

4. At this juncture, both counsel for the petitioners as well as respondents/complainant are *ad idem* that the matter should be remanded to the trial Court for passing of a fresh order, taking into account the aforementioned legal submissions.



5. I have heard learned counsel for the parties and have perused the relevant material placed on record.
6. Accordingly without going into the merits of the case, these cases stand disposed of and impugned summoning order dated 27.10.2023 (Annexure P-8) and order dated 14.11.2023 (Annexure P-9) are hereby set aside. The cases are remanded to the concerned Special Court with the directions to pass a fresh order in accordance with the provisions of law.
7. A photocopy of this order be placed on the files of other connected cases.

November 11, 2024
poonam

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No